

CERTIFICATE

SUPREME COURT OF THE UNITED STATES

RECEIVED TERM 1909

No. 267

Wm. H. McDaniel

vs. GEORGE G. WILLIAMS, APPELLANT

GEORGE G. WILLIAMS AND JOHN B. DODD

APPEAL FROM THE UNITED STATES DISTRICT COURT OF
APPEALS FOR THE SECOND CIRCUIT

FILED JAN 12 1909

(10313)

(16,819.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 257.

KENT K. HAYDEN, AS RECEIVER, APPELLANT,

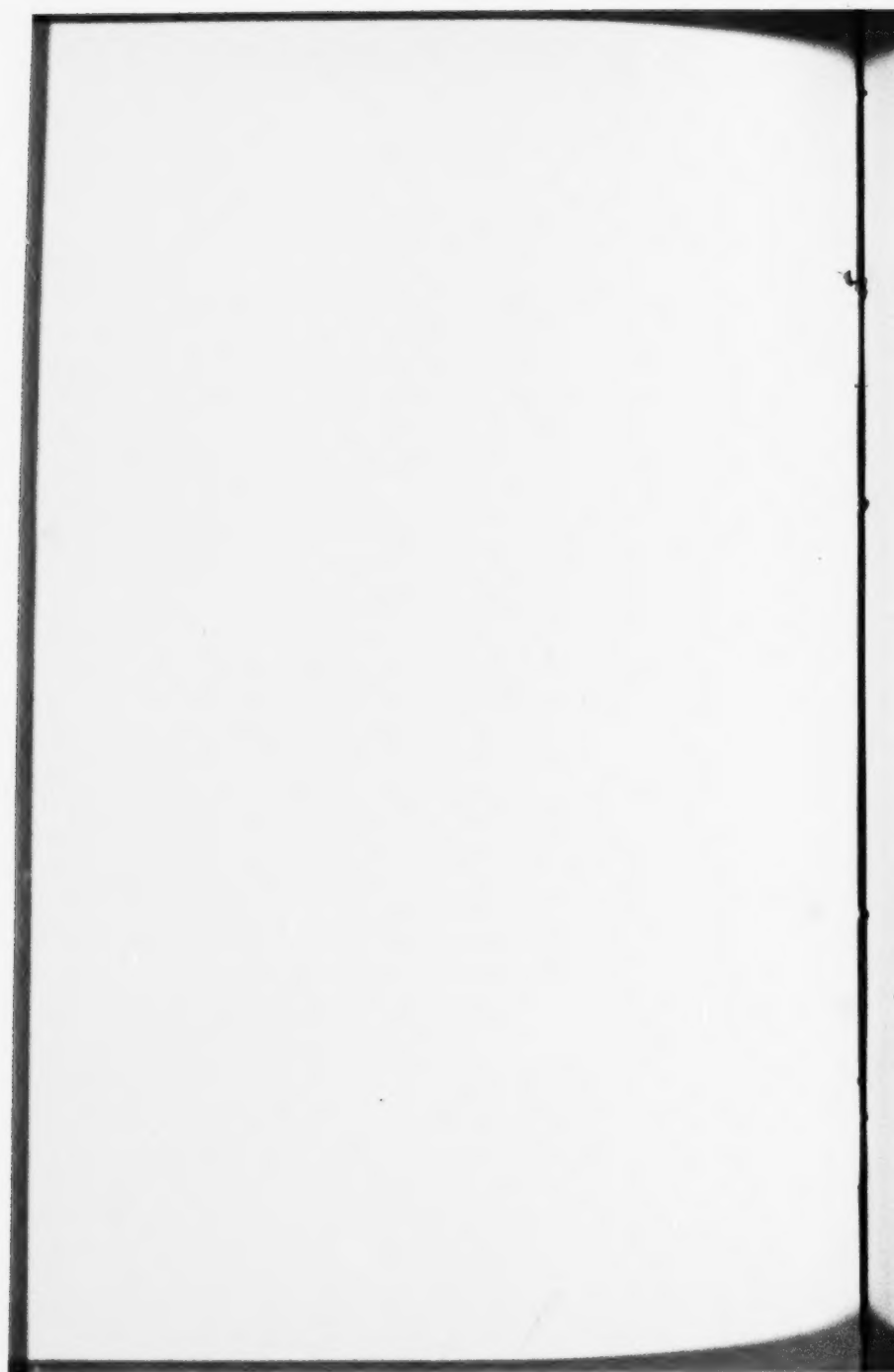
vs.

GEORGE G. WILLIAMS AND JOHN B. DODD.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT.

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1 United States Circuit Court of Appeals, Second Circuit.

KENT K. HAYDEN, as Receiver, Complainant, Appellant, }
 vs.
 GEORGE G. WILLIAMS and JOHN B. DODD, Defendants, }
 Appellants.

Certification of Questions to the Supreme Court under the Act of March 3, 1891.

This cause came before this court on January 18, 1898, upon cross-appeals from a decree of the circuit court, southern district of New York, which decreed the payment of certain moneys to the complainant. The defendants appealed from the whole decree; the complainant because it did not give him more.

Upon the argument of said appeals certain questions of law were presented as to which this court desires the instruction of the Supreme Court for its proper decision. The pleadings are annexed hereto and the facts are as follows:

Statement of Facts.

The complainant is the receiver of the Capital National Bank of Lincoln, Nebraska, which suspended payment in January, 1893, in a condition of hopeless insolvency. The stockholders, including the defendants, have been assessed to the full value of their respective holdings, but the money thus obtained, added to the amount realized from the assets, would not be sufficient, even if all dividends paid during the bank's existence were repaid to the receiver, to pay 75% of the claims of the bank's creditors. This suit was brought to compel the repayment of and accounting for certain dividends paid by the bank to the defendants, as holders of capital stock of the bank of the par value of \$5,000, on the ground alleged in the bill, that each of said dividends was fraudulently declared and paid out of the capital of the bank and not out of net profits. A similar suit was brought against the stockholders resident in Nebraska, and upon appeal from a decree on demurrers was sustained by the circuit court of appeals in the eighth circuit, defendants in that case conceding by their demurrers that the bank was insolvent when each dividend was paid.

The bank was organized in 1883, with a capital of \$100,000, which was increased to \$200,000 June 2, 1884, and to \$300,000 July 21, 1886. The dividends which were paid from time to time were as follows:

Date.	Amount paid in dividends.	Defendant received.
1885, Jan. 13.....	\$15,000	\$187 50
" July 14.....	13,000	162 50
1886, Jan. 12.....	16,000	200
" July 13.	14,000	175
1887, Jan. 11....	18,000	300
1887, July 12....	18,000	300
3 1888, Jan. 10.....	18,000	300
" July 10.....	18,000	300
1889, Jan. 8....	18,000	300
" July 9.....	18,000	300
1890, Jan. 14.....	15,000	250
" July 11.....	15,000	250
1891, Jan. 13.....	15,000	250
" July 13.....	15,000	250
1892, Jan. 12.....	15,000	250
" July 12	12,000	200

All dividends except the last were paid to the defendant Williams, a stockholder to the amount of \$5,000 from the organization of the bank. The last dividend was paid to defendant Dodd, who bought Williams' stock and had the same transferred to his own name December 16, 1891.

When the dividend of Jan. 6, 1889, was declared and paid, and when each subsequent dividend down to and including July, 1891, was declared and paid, there were no net profits, the capital of the bank was impaired, and the dividends were paid out of capital, but the bank was still solvent.

When the dividends of January and July, 1892, were declared and paid, there were no net profits, the capital of the bank was lost, and the bank actually insolvent.

The defendants, neither of whom was an officer or director, were ignorant of the financial condition of the bank and received the dividends in good faith, relying on the officers of the bank and believing the dividends were coming out of profits.

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Questions Certified.

Upon the facts set forth, the questions of law concerning which this court desires the instruction of the Supreme Court for its proper decision is:

Can the receiver of a national bank recover a dividend paid not at all out of profits, but entirely out of capital, when the stockholder receiving such dividend acted in entire good faith, believing the

same to be paid out of profits, and when the bank at the time such dividend was declared and paid was not insolvent?

Has a U. S. circuit court jurisdiction to entertain a bill in equity brought by the receiver of a national bank against stockholders to recover dividends which it is claimed were improperly paid when such suit is brought against two or more stockholders and embraces two or more dividends, and when the objection that there is an adequate remedy at law is raised by the answer?

March 9th, 1898.

WM. J. WALLACE.
E. HENRY LACOMBE.
N. SHIPMAN.

5 UNITED STATES OF AMERICA, } ss:
Second Circuit,

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the case entitled Kent K. Hayden, as receiver, complainant, appellant, against George G. Williams and John B. Dodd, defendants, appellants, was duly filed and entered of record in my office by order of said court on the 10th day of March, 1898, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States Seal United States Circuit Court of Appeals, Second Circuit. circuit court of appeals for the second circuit, at the city of New York, in the southern district of New York, this 10th day of March, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

WM. PARKIN,
Clerk United States Circuit Court of
Appeal for the Second Circuit.

6 In the Circuit Court of the United States for the Southern District of New York, in the Second Circuit. In Equity.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, Complainant, }
vs. }
GEORGE G. WILLIAMS and JOHN B. DODD, Defendants.

Bill.

To the judges of the circuit court of the United States for the southern district of New York:

Kent K. Hayden, receiver of the Capital National Bank of Lincoln, Nebraska, brings this his bill against George G. Williams and John B. Dodd, and therefore your orator complains and says that
7 the said Capital national bank is a banking association duly organized under and by virtue of the laws of the United

States, and located at Lincoln in the State of Nebraska, which said bank, from about the 2d day of June, 1884, until on or about the 23d of January, 1893, was engaged in the business of banking at the place last aforesaid under the laws of the United States, on or about which last-mentioned day said Capital National Bank of Lincoln failed, became and was insolvent, and the Comptroller of the Currency of the United States became and was satisfied of the insolvency of said bank, and thereupon, on or about the 6th day of February of the year last aforesaid, after due examination of affairs of said bank, the said Comptroller of the Currency appointed and duly commissioned John D. Macfarland receiver of the said association; that said Macfarland qualified as such receiver and entered upon the duties of said office and proceeded to close up the said association; on or about the 4th day of May of the year last aforesaid, the said Macfarland resigned his said office of receiver of said bank, which resignation was duly accepted by the said comptroller, and on or about the 8th day of May of the year last aforesaid, your orator, by the name and designation of K. K. Hayden, was by the said Comptroller of the Currency of the United States duly appointed receiver of the said Capital National Bank of Lincoln, to succeed the said Macfarland; that on or about the 31st day of said last-mentioned month of the year last aforesaid, your orator having duly qualified as such receiver of said Capital National Bank of Lincoln, entered upon the duties of said office, took possession of said bank, its books, records, assets and effects, proceeded to close up said bank, is now engaged in closing and winding up the affairs of such bank; and that this suit is brought, and bill filed for the purpose of closing and winding up the affairs of such bank, of collecting its assets and effects, converting them into money and distributing it amongst the depositors and other creditors of said bank, *pro rata*, to their several and respective just claims and demands.

Your orator further sheweth to your honors that the said Capital National Bank of Lincoln was organized as a national banking institution on or about the 2d day of June, 1884, from which last-mentioned day until the day of its failure, as hereinbefore set forth and stated, the said bank was engaged as aforesaid in doing a general banking business under the laws of the United States at the place last aforesaid; that from the date of its organization as aforesaid up to the date of its failure, as hereinbefore stated, the said bank, while it did a large business and received large sums of money on deposit, its expense account was large, and at different times and dates between the time and date of the organization of the said bank and the time and date of its failure, as hereinbefore stated, it met with and sustained great and heavy losses in its business, and that by reason of such losses, within less than six months after its organization and commencement of business as aforesaid, the capital of said bank became and was greatly impaired; that on the 31st day of December, 1884, the capital of said bank was greatly impaired as aforesaid, and there were no net earnings nor clear profits of the business of said bank theretofore done and transacted; that thereafter, on or about the second Tuesday of January, 1885,

the directors of said bank, theretofore duly elected by the shareholders of said bank, duly qualified and acting as such directors, that is to say, the following-named persons: Charles W. Mosher, Richard C. Outcault, David E. Thompson, Ambrose P. S. Stuart, Charles E. Yates, Ellis P. Hamer, Rolla O. Phillips and William W. Holmes, since deceased, at a regular meeting of said directors as a board of directors of said bank, unlawfully, fraudulently and with intent to further impair the capital of said bank and defraud the said bank and its creditors, ordered and declared a dividend for the half year ending December 31st, 1884, of six and a half per centum upon the capital of said bank, to be divided amongst and paid to the shareholders of the said bank, according to their several and respective holdings of the shares of the stock of said bank; that in intended pursuance of the said order and direction of said directors, on or about the said second Tuesday in January, 1885, the same being the 13th day of January of said year, the said bank out of its capital and to the further impairment thereof, and not out of net earnings theretofore earned and accumulated by said bank, paid and delivered to the said defendant, George W. Williams, \$187.50.

That the officers of said bank whose duty it was to cast up and state the amount payable to each one of the said shareholders, by accident and mistake of fact, instead of casting up and stating the same upon a ratio of six and one-half per centum upon the amount of the capital of said bank, did in fact cast up and stated the same at the rate of seven and one-half per centum of said capital, which several amounts, so by accident and mistake of fact cast up and stated at sums respectively of one per cent. greater than was intended by the said directors, were by the said bank by mistake of fact paid to and retained by said shareholders respectively, which said several sums of money then and there accepted, received and retained by the said parties respectively thereby became and were im-
10 pressed and chargeable with a trust in favor of the said bank, and were held by said party receiving the same as aforesaid respectively in trust to repay the same, for the purpose of restoring the said capital, making good its said impairment and paying the just debts of the said bank, but that the said defendant has not paid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors that on the 30th day of June, 1885, the said bank, although continuing to do and doing a large business, and having large sums of money on deposit, yet its expense and interest accounts being large, and it having met with and sustained great and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by means of the losses met and sustained by the said bank in its said business, as above stated, the capital of said bank became and was more greatly impaired; that bills receivable owned and held by said bank, and representing large amounts of its capital, had become and were bad debts, and should by law and usage have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper;

that on or about the second Tuesday, being the 14th day of July of the year last aforesaid, the said board of directors of said bank, which was then composed of the same persons as at the time of declaring the first dividend, as hereinbefore stated, acting as such board of directors, unlawfully, fraudulently, and with intent to further impair the capital of said bank and defraud the said bank and its creditors, ordered and declared a dividend for the half year ending June 30th, 1885, of six and one-half per centum upon the capital of said bank, to be divided amongst and paid to the shareholders of the said bank according to their several and re-

11 spective holdings of the shares of the stock of said bank; that, in pursuance of the said order and declaration of said directors, on or about the said 14th day of July, the same being the second Tuesday of said month, 1885, the said bank, out of its capital, to the still further impairment thereof, and not out of the net earnings thereof theretofore earned or accumulated by said bank, paid and delivered to the said defendant George G. Williams \$162.50, which said sum of money, then and there accepted, received and retained by the said party, thereby became and was impressed and charged with a trust in favor of the said bank, and was held by said party receiving the same as aforesaid in trust for the said bank to repay the same, for the purpose of restoring the said capital, making good its said impairment and paying the just debts of the said bank, but that the said defendant has not repaid the said money so received by him, nor any part thereof.

Your orator further sheweth unto your honors that on the 31st day of December, 1885, the said bank, although still continuing to do and doing a large business and having large sums of money on deposit, yet its expense and interest accounts being large and it having met with and sustained great and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of the losses met and sustained by the said bank in its said business as above stated, the capital of said bank became and was still more greatly impaired; that bills receivable, owned and held by said bank and representing large amounts of its capital, become and were bad debts and were then known to be bad debts by the officers and directors of the said bank, and should by law and usage have been charged off the books of said bank, yet the same

12 continued to be carried on the said books as good paper.

That on or about the 12th day of January, 1886, the same being the second Tuesday of said month, the said board of directors of said bank, which was then composed of the same persons as at the time of declaring the first and second dividends as hereinbefore stated, at a regular meeting of said board and acting as such board of directors unlawfully, fraudulently and with intent to further impair the capital of said bank and defraud the said bank and its creditors, ordered and declared a dividend for the half year ending December 31, 1885, of eight per centum upon the capital of said bank, to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the

shares of the stock of said bank ; that in pursuance of the said order and declaration of said directors, soon thereafter, but upon what particular day or days of the said last-mentioned month in the year last aforesaid your orator is unable to state with precision, the said bank out of its capital, to the still greater and further impairment thereof, and not out of net earnings thereof theretofore earned or accumulated by said bank, paid and delivered to the said defendant George G. Williams \$200, which said sum of money then and there paid to, accepted, received and retained by the said party, thereby become and was impressed and chargeable with a trust in favor of the said bank and was held by such party receiving the same as aforesaid in trust for the said bank to repay the same for the purpose of restoring the said capital, making good its said impairment and paying the just debts of the said bank, but that the said defendant has not repaid the said money so received by him or any part thereof.

13 Your orator further sheweth unto your honors that on the 30th day of June, 1886, the said bank, although still continuing to do and doing a large business and having large sums of money on deposit, yet its expense and interest accounts being large and it having met with and sustained great and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted ; that by reason of the losses met and sustained by the said bank in its said business as above stated, the capital of said bank had become and was still more greatly impaired ; that bills receivable owned and held by said bank and representing large amounts of its capital, became and were bad debts, and were then known to be bad debts by the officers and directors of the said bank, and should by law and usage have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper. That on or about the 13th day of July, 1886, the said board of directors of said bank, which was then composed and constituted of the same persons as at the time of the declaring of the first, second and third dividends as hereinbefore severally stated at a regular meeting of said board, and acting as such board of directors, unlawfully, fraudulently and with intent to further impair the said capital of said bank and defraud the said bank and its creditors, ordered and declared a dividend for the half year ending on the 30th day of June, 1886, of seven per centum upon the capital of said bank to be divided amongst and paid to, the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said bank ; that soon thereafter, but upon what day or days of the said last-mentioned month in the year last aforesaid your orator is unable to state with precision, the said bank out of the capital of said bank to the still greater and further impairment thereof, and not out of net earnings thereof theretofore earned or accumulated by said bank, paid and delivered to said defendant, George G. Williams, \$175, which said sum of money then and there paid to, accepted, received and retained by the said party thereby become and was impressed and charged with a trust

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in favor of the said bank, and was held by such party receiving the same as aforesaid in trust for the said bank to repay the same for the purpose of restoring the said capital, making good its said impairment and paying the just debts of the said bank, but that the said defendant has not repaid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors that on the 31st day of December, 1886, the said bank, although still continuing to do and doing a large business, and had large sums of money on deposit, yet, its expense and interest accounts being large, and it having met with and sustained great and heavy losses in its business, had no net earnings nor clear profits of the business of said bank, theretofore done and transacted; that by reason of the losses met and sustained by the said bank in its said business, as above stated, the capital of said bank had become and was still more greatly impaired; that bills receivable, owned and held by said bank and representing large amounts of its capital, some before and some after the declaration and distribution and payment of the dividend of July, 1886, as hereinbefore set out and stated, had become and were bad debts and were at all times known by the officers and directors of the said bank to be bad debts and should by law and the custom, rules and usage of banks and bankers have been charged off the books of said bank, yet the same continued to be carried on the said

15 books as good paper and to represent so much of the capital of said bank. That on or about the 11th day of January, 1887, the said board of directors of said bank, which was still composed and constituted of the same persons as at the times of declaring the first, second, third and fourth dividends, as hereinbefore severally stated, at a regular meeting of said directors, and acting as such board of directors, unlawfully, fraudulently and with the intent to still further impair the capital of said bank and to defraud its creditors, ordered and declared a dividend for the half year ending December 31, 1886, of six per centum upon the capital of said bank to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said bank; that soon thereafter, but upon what particular day or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with precision, the said bank, out of the capital of said bank, to the still greater and further impairment thereof, and not out of net earnings theretofore earned or accumulated by said bank, paid and delivered to said George G. Williams \$300, which said sum of money then and there paid to, received, accepted and retained by the said party thereby became and was impressed and charged with a trust in favor of the said bank, and was held by such party receiving the same as aforesaid in trust for the said bank to repay the same for the purpose of restoring the said impairment and paying the just debts of the said bank, but that the said defendant has not repaid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors that on the 30th day of June, 1887, the said bank, although still continuing to do and

16 doing a large business and having large sums of money on deposit, yet its expense and interest accounts being large and it having met with and sustained many and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of the losses met and sustained by the said bank in its said business, as above stated, the capital of said bank became and was still more greatly impaired; that bills receivable, owned and held by said bank and representing large amounts of its capital, some before and some after the declaration, distribution and payment of the dividends of January, 1887, as hereinbefore set out and stated, had become and were bad debts and were at all times known by the officers and directors of the said bank to be bad debts, and should by law and custom, rules and usages of banks and bankers have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper and to represent so much of the capital of said bank.

That on or about the 12th day of July, 1887, the said board of directors of said bank, which was still composed and constituted of the same persons as at the times of the first, second, third, fourth and fifth dividends as hereinbefore severally stated, at a regular meeting of said directors and acting as such board of directors of said bank, unlawfully, fraudulently and with the intent to still further impair the capital of said bank and to defraud the said bank and its creditors, ordered and declared a dividend for the half year ending June 30, 1887, of six per centum upon the capital of said bank, to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said bank; that soon thereafter, but upon what particular day or days of the said last-mentioned

17 month of the year last aforesaid your orator is unable to state with precision, the said bank, out the capital of said bank to the still greater and further impairment thereof and not out of the net earnings or clear profits theretofore earned or accumulated by said bank, paid and delivered to the said defendant as shareholder of the capital stock of said bank, that is to say, to the said defendant, George G. Williams, \$300, which said sum of money then and there paid to, accepted and received by the said party, thereby became and was impressed and charged with a trust in and for the said bank, and was and still is held by said party receiving the same as aforesaid in trust for the said bank to repay the same for the purpose of restoring the said impairment of said capital and paying the just debts of the said bank, but that the said defendant has not repaid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors, that on the 31st day of December, 1887, the said bank, although still continuing to do and doing a large business and having large sums of money on deposit, yet its expense and interest accounts being large and it having met with and sustained many and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of losses met and

sustained by the said bank in its said business as hereinbefore stated and the unlawful and injudicious division amongst and payment to its shareholders by the said bank of large sums of money as dividends, though unearned, the capital of said bank had become and was still more greatly impaired; that bills receivable, owned and held by said bank and representing large amounts of its capital,

- some before and some after the declaration, distribution and
- 18 payment of the dividend of July, 1887, as hereinbefore set out and stated, had become and were bad debts, and were at all times known by the officers and directors of the said bank to be bad debts and should by law and the custom, rules, and usage of banks and bankers, to have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper and to represent so much of the capital of said bank; that on or about the 10th of January, 1888, the said board of directors of the said bank, which was still composed and constituted of the same persons as at the times of the first, second, third, fourth, fifth, and sixth dividends as hereinbefore stated, at a regular meeting of said directors and acting as such board of directors of said bank, unlawfully, fraudulently, and with intent to further impair the capital of said bank and to defraud the said bank and its creditors, ordered and declared a dividend for the half year ending December 31, 1887, of six per centum upon the capital of said bank, to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said bank. That soon thereafter, but upon what particular day or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with precision, the said bank, out of the capital of said bank, to the still greater and further impairment thereof and not out of the net earnings nor clear profits theretofore earned or accumulated by said bank, paid and delivered to said defendant as shareholder of the capital stock of said bank, that is to say, to the said defendant, George G. Williams, \$300, which said sum of money then and there paid to, received, and accepted by the said party, thereby become and was im-
- 19 pressed and charged with a trust in favor of the said bank, and was still held by the party receiving the same as aforesaid in trust for the said bank to repay the same for the purpose of restoring the said impairment of said capital and paying the just debts of the said bank, but that the said defendant has not paid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors that on the 30th day of June, 1888, the said bank, although still continuing to do and doing a large business and having large sums of money on deposit, yet its expense and interest accounts being large, and it having met with and sustained many and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of such losses met with and sustained — the said bank in its said business, as hereinbefore stated, and the unlawful and injudicious division amongst and payment to its shareholders by the said bank of large sums of

money as dividends though unearned, the capital of said bank had become and was still more greatly impaired; that bills receivable owned and held by the said bank and representing large amount of its capital, some before and some after the declaration, distribution, and payment of the dividend of January, 1888, as hereinbefore set forth and stated, had become and were bad debts, and were at all times known by the officers and directors of said bank to be bad debts, and should by law and the custom, rules, and usage of banks and bankers have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper and to represent so much of the capital of said bank; that on or about the 10th day of July, 1888, the said board of directors of the said bank, which was still composed and con-

stituted of the same persons as at the time of the first, second, third, fourth, fifth, sixth and seventh dividends as hereinbefore stated, at a regular meeting as such board of directors of such bank, unlawfully, fraudulently and with the intent to further impair the capital of the said bank and to defraud the said bank and its creditors, ordered and declared a dividend for the half year ending June 30, 1888, of six per centum upon the capital of said bank, to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of the said bank. That soon thereafter, but upon what particular day or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with certainty or precision, the said bank out of the capital of said bank, to the still greater and further impairment thereof, and not out of net earnings nor clear profits by said bank earned or accumulated by said bank, paid and delivered to the said defendant as shareholder of the capital stock of said bank, that is to say, to the said defendant, George G. Williams, \$300, which said sum of money then and there paid to, received and accepted by the said party, thereby become and was impressed and charged with a trust in favor of the said bank, and still are held by the party receiving the same as aforesaid in trust for the said bank to repay the same for the purpose of restoring the said impairment of said capital and paying the just debts of the said bank, but that the said defendant has not paid the money so received by him nor any part thereof.

Your orator further sheweth unto your honors that on the 31st day of December, 1888, the said bank, although still continuing to do and doing a large business, and having large sums of money on deposit, yet its expense and interest accounts being large, and

it having met with and sustained many and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of such losses met with and sustained in its business as hereinbefore stated, and the unlawful and injudicious division amongst and payment to its shareholders by the said bank of large sums of money as dividends though unearned, the capital of said bank had become and was still more greatly impaired; that bills receivable owned and held by said bank and representing large amounts of its capital,

some before and some after the declaration, distribution and payment of the dividend of July 10, 1888, as hereinbefore set forth and stated, had become and were bad debts and were at all times known to the directors and officers of said bank to be bad debts and should by law and the custom, rules and usages of banks and bankers have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper and representing so much of the capital of the said bank; that on or about the 9th day of January, 1889, the said board of directors of the bank, which was composed and constituted of the same persons as at the time of the first, second, third, fourth, fifth, sixth, seventh and eighth dividends as hereinbefore stated, at a regular meeting as such board of directors of such bank, unlawfully, fraudulently and with the intent to further and more greatly impair the capital of said bank and to defraud the said bank and its creditors, ordered and declared a dividend for the half year ending December 31, 1888, of six per centum of the capital of said bank to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said

bank. That soon thereafter, but upon what particular day
22 or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with certainty and precision, the said bank, out of the capital of said bank, to the still greater and further impairment thereof, and not out of net earnings nor clear profits by said bank earned or accumulated by said bank, paid and delivered to the said defendant as shareholder of the capital stock of said bank, that is to say, to the said George G. Williams, \$300, which said sum of money then and there paid to, received and accepted by the said party, thereby become and was impressed and charged with a trust in favor of the said bank, and was and still is held by such party receiving the same as aforesaid in trust for the said bank to repay the same for the purpose of restoring the said impairment of said capital and paying the just debts of the said bank, but that the said defendant has not paid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors that on the 30th day of June, 1889, the said bank, although still continuing to do and doing a large business and having large sums of money on deposit, yet its expense and interest accounts being large, and it having met with and sustained many and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of losses met and sustained by the said bank in its said business, as hereinbefore stated, and the unlawful and injudicious division amongst and payment to its shareholders by the said bank, of large sums of money as dividends, though unearned, the capital of said bank had become and was still more impaired; that bills receivable owned and held by said bank

and representing large amounts of its capital, some before and
23 some after the declaration, distribution and payment of the dividend of January, 1889, as hereinbefore set out and stated, had become and were bad debts, and were at all times known by the

officers and directors of the said bank to be bad debts, and should by law and the custom, rules and usage of banks and bankers to have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper and to represent so much of the capital of said bank; that on or about the 10th day of July, 1889, the said board of directors of the said bank, which was still composed and constituted of the same persons as at the times of the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth dividends, as hereinbefore stated, at a regular meeting of said directors, and acting as such board of directors of said bank, unlawfully, fraudulently and with intent to further impair the capital stock of the said bank and to defraud the said bank and its creditors, ordered and declared a dividend for the half year ending June 30th, 1889, of six per centum upon the capital of said bank to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said bank. That soon thereafter, but upon what particular day or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with precision, *that* said bank, out of the capital of said bank, to the still greater and further impairment thereof, and not out of net earnings nor clear profits theretofore earned or accumulated by said bank, paid and delivered to said defendant as shareholder of the capital stock of said bank, that is to say, to the said defendant, George G. Wil-

24 liams, \$300, which said sum of money then and there paid to, received and accepted by the said party thereby become and was impressed and charged with a trust in favor of the said bank, and was and still is held by such party receiving the same as aforesaid in trust for the said bank to repay the same for the purpose of restoring the said impairment of said capital and paying the just debts of the said bank, but that the said defendant has not repaid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors that on the 31st day of December, 1889, the said bank, although still continuing to do and doing a large business, and having large sums of money on deposit, yet its expense and interest accounts being large, and it having met with and sustained many and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of losses met and sustained by the said bank in its said business, as hereinbefore stated, and the unlawful and injudicious division amongst and payment to its shareholders by the said bank of large sums of money as dividends, though unearned, the capital of said bank had become and was still more greatly impaired; that bills receivable owned and held by said bank, and representing large amounts of its capital, some before and some after the declaration, distribution and payment of the dividend of July, 1889, as hereinbefore set out and stated, had become and were bad debts, and were at all times known by the officers and directors of the said bank to be bad debts, and should by law and the custom, rules and usage of banks and bank-

ers, to have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper and to represent so much of the capital of said bank; that on or about
25 the 15th of January, 1890, the said board of directors of the said bank, which was still composed and constituted of the same persons as at the times of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth dividends, as hereinbefore stated, at a regular meeting of said directors, and acting as such board of directors of said bank, unlawfully, fraudulently and with the intent to further impair the capital of the said bank and to defraud the said bank and its creditors, ordered and declared a dividend for the half year ending December 31, 1889, of five per centum upon the capital of said bank, to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said bank. That soon thereafter, but upon what particular day or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with precision, the said bank, out of the capital of said bank, to the still greater and further impairment thereof, and not out of net earnings nor clear profits theretofore earned or accumulated by said bank, paid and delivered to the said defendant as shareholder of the capital stock of said bank, that is to say, to the said defendant, George G. Williams, \$250, which said sum of money then and there paid to, received and accepted by the said party thereby become and was impressed and charged with a trust in favor of the said bank, and was and still is held by such party receiving the same, as aforesaid, in trust for the said bank to repay the same for the purpose of restoring the said impairment of said capital and paying the just debts of the said bank, but that the said defendant has not repaid the said money so received by him, nor any part thereof.

26 Your orator further sheweth unto your honors that on the 30th day of June, 1890, the said bank, although still continuing to do and doing a large business, and having large sums of money on deposit, yet its expense and interest accounts being large, and it having met with and sustained many and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of losses met and sustained by the said bank in its said business as hereinbefore stated, and the unlawful and injudicious dividends amongst and payment to its shareholders by the said bank of large sums of money as dividends, though unearned, the capital of said bank had become and was still more greatly impaired; that bills receivable owned and held by said bank, and representing large amounts of its capital, some before and some after the declaration, distribution and payment of the dividend of January, 1890, as hereinbefore set out and stated, had become and were bad debts, and were at all times known by the officers and directors of the said bank to be bad debts, and should by law and the custom, rules and usage of banks and bankers to have been charged off the books of said bank, yet the same continued to be carried on the said books

as good paper, and to represent so much of the capital of said bank ; that on or about the 9th day of July, 1890, the said board of directors of the said bank, which was still composed and constituted of the same persons as at the times of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh dividends, as hereinbefore stated, at a regular meeting of said directors, and acting as such board of directors of said bank, unlawfully, fraudulently and with intent to further impair the capital of the said bank, and to

defraud the said bank and its creditors, ordered and declared
27 a dividend for the half year ending June 30th, 1890, of five per centum upon the capital of said bank to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said bank. That soon thereafter, but upon what particular day or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with precision, the said bank out of the capital of said bank, to the still greater and further impairment thereof, and not out of net earnings nor clear profits theretofore earned or accumulated by said bank, paid and delivered to said defendant George G. Williams, as shareholder of the capital stock of said bank, the sum of \$250, which said sum of money then and there paid to, received and accepted by the said party thereby become and was impressed and charged with a trust in favor of the said bank, and was and still is held by the party receiving the same as aforesaid in trust for the said bank to repay the same for the purpose of restoring the said impairment of said capital and paying the just debts of the said bank, but that the said defendant has not repaid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors that on the 31st day of December, 1890, the said bank, although still doing and continuing to do a large business and having large sums of money on deposit, yet its expense and interest accounts being large, and it having met with and sustained many and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted ; that by reason of losses met and sustained by the said bank in its said business as hereinbefore stated, and the unlawful and injudicious division amongst and

28 payment to its shareholders by the said bank of large sums of money as dividends though unearned, the capital of said bank had become and was still more greatly impaired ; that bills receivable, owned and held by said bank, and representing large amounts of its capital, some before and some after the declaration, distribution and payment of the dividend of July, 1890, as hereinbefore set out and stated, had become and were bad debts, and were at all times known by the officers and directors of the said bank to be bad debts, and should by law and the custom, rules and usage of banks and bankers to have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper, and represented so much of the capital of said bank ; that on or about the 15th day of January, 1891, the said board of directors of the said bank, which was still composed and constituted

of the same persons as at the times of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth dividends, as hereinbefore stated, at a regular meeting of said directors, and acting as such board of directors of said bank, unlawfully, fraudulently and with the intent to further impair the capital of the said bank, and to defraud the said bank and its creditors, ordered and declared a dividend for the half year ending December 31, 1890, of five per centum, upon the capital of said bank, to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said bank.

That soon thereafter, but upon what particular day or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with precision, the said bank, out of the capital

29 of said bank, to the still greater and further impairment thereof and not out of the net earnings nor clear profits theretofore earned or accumulated by said bank, paid to and delivered to said defendant as shareholder of the capital stock of said bank, that is to say, to the said defendant, George G. Williams, \$250, which said sum of money then and there paid to, received and accepted by the said party, thereby become and was impressed and charged with a trust in favor of the said bank and was and still is held by the party receiving the same as aforesaid, in trust for the said bank to repay the same for the purpose of restoring the said impairment of said capital and paying the just debts of the said bank, but that the said defendant has not repaid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors, that on the 30th day of June, 1891, the said bank, although still continuing to do and doing a large business and having large sums of money on deposit, yet its expense and interest accounts being large and it having met with and sustained many and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of losses met and sustained by the said bank in its said business as hereinbefore stated, and the unlawful and injudicious division amongst and payment to its shareholders by the said bank of large sums of money as dividends, though unearned, the capital of said bank had become and was still more greatly impaired; that bills receivable owned and held by said bank and representing large amounts of its capital, some before and some after the declaration, distribution and payment of the dividend of December, 1890, as hereinbefore set out and stated, had become and were bad debts and were at all times known

30 by the officers and directors of the said bank to be bad debts and should by law and the custom, rules and usages of banks and bankers, to have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper and to represent so much of the capital of said bank; that on or about the 17th day of July, 1891, the said board of directors of the said bank, which was still composed and constituted of the same persons as at the times of the first, second, third, fourth, fifth, sixth,

seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth dividends as hereinbefore stated, at a regular meeting of said directors of said bank, unlawfully, fraudulently and with the intent to further impair the capital of said bank and to defraud the said bank and its creditors, ordered and declared a dividend for the half year ending June 30th, 1891, of five per centum upon the capital of the said bank, to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said bank. That soon thereafter, but upon what particular day or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with precision, the said bank, out of the capital of said bank, to the still greater and further impairment thereof, and not out of net earnings nor clear profits theretofore earned or accumulated by said bank paid and delivered to said defendant as shareholder of the capital stock of said bank, that is to say, to the said defendant, George G. Williams, \$250, which said sum of money then and there paid to, received and accepted by the said party, thereby become, was impressed and charged with a trust in favor of the said bank and was and still is held by the party receiving the same as aforesaid, in

31 trust for the said bank to repay the same for the purpose of restoring the said impairment of said capital and paying the just debts of the said bank, but that said defendant has not repaid the said money so received by him, nor any part thereof.

Your orator further sheweth unto your honors that on the 31st day of December, 1891, the said bank, although still continuing to do and doing a large business and having large sums of money on deposit, yet its expense and interest accounts being large, and it having met with and sustained many and heavy losses in its said business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of losses met and sustained by the said bank in its said business as hereinbefore stated, and the unlawful and injudicious division amongst and payment to its shareholders by the said bank of large sums of money as dividends, though unearned, the capital of said bank had become and was still more greatly impaired; that bills receivable, owned and held by said bank and representing large amounts of its capital, some before and some after the declaration, distribution and payment of the dividend of July, 1891, as hereinbefore set out and stated, had become and were bad debts, and were at all times known by the officers and directors of the said bank to be bad debts, and should by law and the custom, rules and usage of banks and bankers to have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper and to represent so much of the capital of said bank; that on or about the 13th day of January, 1892, the said board of directors of the said bank, which was still composed and constituted of the same persons as at the times of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth dividends as hereinbefore stated at a regular meeting

32 of the said directors, and acting as such board of directors of

said bank, unlawfully, fraudulently, and with the intent further impair the capital of the said bank and to defraud the said bank and its creditors, ordered and declared a dividend for the year ending December 31, 1891, of 5 per centum upon the capital of said bank to be divided amongst and paid to the shareholders of the said bank according to their several and respective holdings of the shares of the capital stock of said bank. That soon thereafter, but upon what particular day or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with precision, the said bank, out of the capital of said bank, to the still greater and further impairment thereof and not out of net earnings nor clear profits theretofore earned or accumulated by said bank, paid and delivered to said defendant as shareholder of the capital stock of said bank—that is to say, to the said defendant George G. Williams, \$250, which said sum of money then and there paid to, received, and accepted by the said party thereby became and was impressed and charged with a trust in favor of the said bank, and was and still is held by the party receiving the same as aforesaid in trust for the said bank to repay the same for the purpose of restoring the said impairment of said capital and paying the just debts of said bank, but that the said defendant has not repaid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors that on the 30th day of June, 1892, the said bank, although still continuing to do and doing a large business and having large sums of money on deposit, yet its expense and interest accounts being large and it having met with and sustained many and heavy losses in its business, had no net earnings nor clear profits of the business of said bank theretofore done and transacted; that by reason of losses met and sustained by the said bank in its said business, as hereinbefore stated, and the unlawful and injudicious division amongst and payment to its shareholders by the said bank of large sums of money as dividends, though unearned, the capital of said bank had become and was still more greatly impaired; that bills receivable owned and held by said bank and representing large amounts of its capital, some before and some after the declaration, distribution, and payment of the dividend of December, 1891, as hereinbefore set out and stated, had become and were bad debts and were at all times known by the officers and directors of the said bank to be bad debts, and should by law and the custom, rules, and usage of banks and bankers to have been charged off the books of said bank, yet the same continued to be carried on the said books as good paper and to represent so much of the capital of said bank; that on or about the 13th day of July, 1892, the said board of directors of the said bank, which was still composed and constituted of the same persons as at the times of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth dividends, as hereinbefore stated, with the exception of Richard C. Outcalt, in place of William W. Holmes, deceased, at a regular meeting of said directors and acting as such board of directors of said bank, unlawfully, fraudulently

and with intent to further impair the capital stock of the said bank and to defraud the said bank and its creditors, ordered and declared a dividend for the half year ending June 30th, 1892, of four per centum upon the capital of said bank to be divided amongst and paid to the shareholders of the said bank according to their
 34 several and respective holdings of the shares of the capital stock of said bank. That soon thereafter but upon what day or days of the said last-mentioned month of the year last aforesaid your orator is unable to state with precision, the said bank, out of the capital of said bank, to the still greater and further impairment thereof, and not out of net earnings nor clear profits theretofore earned or accumulated by said bank, paid and delivered to said defendant, as shareholder of the capital stock of said bank, that is to say, to the said defendant John B. Dodd, \$200, which said sum of money then and there paid to, received and accepted by the said party thereby become and was impressed, and charged with a trust in favor of the said bank and was and still is held by the party receiving the same for the purpose of restoring the said impairment of said capital and paying the just debts of the said bank, but that the said defendant has not repaid the said money so received by him nor any part thereof.

Your orator further sheweth unto your honors that the total amounts of dividends received by each of said defendants, arising from and being the proceeds of the various wrongful dividends heretofore described, are as follows, that is to say, the said defendant George G. Williams received the aggregate sum of \$3,775; John B. Dodd, \$200.

That there were other shareholders to whom large sums of money were unlawfully and fraudulently paid and delivered by said bank as dividends at the several and respective dates and times of the declaration and distribution of dividends to and amongst the shareholders of said bank, as hereinbefore stated, and the reason why said other shareholders have not been included and sued in this action is that they are not residents of this State nor found therein.

35 Your orator further sheweth unto your honors that at the several times and dates of the orders and declarations of dividends by the directors of said bank, as hereinbefore set out and stated, and at all times since the 2d day of January, 1888, inclusive, the said bank has been insolvent.

Your orator further sheweth unto your honors that the affairs of said Capital National Bank of Lincoln, at the time and date of the commencement of this suit and the filing of this bill remain and are in an unsettled state and condition; that the total assets of said bank upon a careful estimate thereof at the date of the same passing into the hands of a receiver was found to be of the face value of \$979,844.96, \$433,053.82 of which is alleged to be bad debts and absolutely worthless; that of these assets \$331,359.86 were and still are held by other banks, having been sold to them, so that in reality the total amount of assets of said bank amount to only \$648,485.10. That claims have already been allowed against the said bank to the amount of \$833,576.98, and that claims have been presented to the

receiver and not allowed to the amount of \$415,317.84, leaving nominal deficit of assets below claims allowed of \$184,091.88. That of the said unallowed claims the sum of \$10,000 is in judgment duly recorded in the district court of Lancaster county, State of Nebraska on which judgment has been issued and returned unsatisfied.

That the said several sums of money wrongfully paid to and received by the shareholders as dividends out of the capital of said bank, as hereinbefore set forth and stated, amount in the aggregate to the sum of \$253,000.

Your orator further sheweth unto your honors that in pursuance of the unlawful and fraudulent intent to impair the capital of said bank, and to defraud said bank and its creditors, the said directors and officers of said bank, by various and sundry fraudulent representations and false reports to the Comptroller of the Currency of the United States, so concealed the impairment of the capital of said bank and the unlawful and fraudulent character of said dividends as hereinbefore set forth and stated, so that the same was unknown by the Comptroller of the Currency of the United States, creditors of said bank or the general public, until the date of the failure of said bank and its passing into the hands of an officer of the Government, on or about January 23, 1893.

And your orator alleges that while the said impairment of the capital of said bank, the oft-repeated fact of the declaration and distribution of large sums of money to and amongst the said shareholders, as dividends, when there were no net earnings nor clear profits of the business of said bank on hand to be distributed, was well and long known to many of the defendants, yet the same as well as all facts and circumstances pointing to, or indicating such state or condition of said bank, or such a course or practice on the part of its officers and directors, were carefully concealed from its depositors and other creditors and that no such facts nor circumstances, nor any fact sufficient to put a prudent person upon an inquiry which would have led to a knowledge of such facts or circumstances were known to or discovered by any depositor or other creditor of said bank, nor his or their representative, until on or about the 23d day of January, 1893.

In tender consideration whereof, and forasmuch as your orator is entirely remediless by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable to the end, therefore, that the said defendants and their confederates, when discovered, may full, true, direct and perfect answers make (and answers under oath of the said defendants, and of each of them, are hereby waived), to all and singular the statements, allegations, charges and matters hereinbefore stated, alleged and charged as fully, specifically and particularly as if the same were hereinafter repeated, and they and each of them thereunto severally and distinctly interrogated.

Your orator prays the decree of this honorable court, that the said several acts of the said directors of the said Capital National Bank of Lincoln, ordering, declaring, distributing amongst and paying to

the said shareholders the several and respective sums of money, as in this bill set out and stated, as dividends, were unlawfully, wrongfully and fraudulently ordered, declared, distributed and paid out, and that said moneys to be restored and paid back to the said bank or the receiver thereof, to be paid out amongst the depositors and other creditors of said bank, in manner provided by law. That this honorable court may decree, ascertain and settle the relative amount and value of the assets of said bank other than and aside from the said moneys paid to, received by and now in the hands of said shareholders as aforesaid, and the debts and demands allowed and allowable against the said bank, and your orator, as receiver thereof, and that the said several and respective respondents be decreed to repay to your orator the total aggregate sums of money paid to and received by them, and each of them, respectively, that is to say, that the defendant George G. Williams be decreed to pay the sum of \$3,775, and John B. Dodd the sum of \$200, or that each of said respondents pay a sum bearing the same proportion to the said aggregate sum so received by them respectively as the aggregate amount of the claims against said bank, allowed and allowable, bear to the assets of said bank, together with lawful interest on such sums severally paid to and received by said several respondents as dividends to shareholders of said bank as hereinbefore stated.

That your orator may be decreed to recover the costs of this action, and that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience.

May it please your honors to grant to your orator the writ of subpoena of the United States of America, issuing out of and under the seal of this honorable court, directed to the said George G. Williams and John B. Dodd, thereby commanding them, and each of them, at a certain day, and under a certain penalty therein to be expressed, to appear before your honors in this honorable court, then and there to answer the premises, and to stand and abide by such order and decree therein as to your honors shall seem meet and as shall be agreeable to equity and good conscience, and your orator shall ever pray.

EDWARD WINSLOW PAIGE,

Solicitor for the Complainant, 44 Cedar Street, New York.

EDWARD WINSLOW PAIGE, *Of Counsel.*

39 In the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, against	} In Equity.
GEORGE G. WILLIAMS and JOHN B. DODD.	

The Answer of George G. Williams, one of the Defendants, to the Bill of Complaint of the Above-named Complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit or advantage of exception or otherwise, that can or may be had to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for him to make answer to, answering, says :

1. That he admits that said Capital national bank mentioned in said bill of complaint, was organized as a national banking association under the laws of the United States in the manner and form and at the time in said bill set forth and averred, and that said bank from the date of said organization and until on or about the 23d day of January, 1893, was engaged in and carried on the business of banking at Lincoln, Nebraska, under the laws of the United States, and that on or about said last-mentioned day said Capital National Bank of Lincoln failed, became and was insolvent, and that thereupon John D. Macfarland was appointed receiver of said bank, and thereafter resigned his said office, and that the complainant was duly appointed receiver of said bank to succeed said Macfarland, and that said complainant is now the duly appointed and qualified receiver of said bank in manner and form as in said bill set forth.

2. And further answering, this defendant denies that at different times and dates between the time and date of the organization of the said bank and the time and date of its failure as in said bill stated, the said bank met with and sustained great and heavy losses in its business, and denies that by reason of such losses, or by reason of any other cause, within less than six months after its organization and commencement of business the capital of said bank became and was greatly impaired; and denies that on or prior to the 31st day of December, 1884, or between said last-named date and the 30th day of June, 1885; or between June 30th, 1885, and December 31st, 1885; or between December 31st, 1885, and June 30th, 1886; or between June 30th, 1886, and December 31st, 1886; or between December 31st, 1886, and June 30th, 1887; or between June 30th, 1887, and December 31st, 1887; or between December 31st, 1887, and June 30th, 1888; or between June 30th, 1888, and December 31st, 1888; or between December 31st, 1888, and June 30th, 1889; or between June 30th, 1889, and December 31st, 1889; or between December 31st, 1889, and June 30th, 1890; or between June 30th, 1890, and December 31st, 1890; or between

41 December 31st, 1890, and June 30th, 1891; or between June 30th, 1891, and December 31st, 1891; or between December 31st, 1891, and June 30th, 1892, said bank met with and sustained great and heavy losses, or any losses in its business, and denies that during any of said times, the said bank had no net earnings nor clear profits of the business of said bank theretofore done and transacted, and denies that during any of said times by means of losses met and sustained by the said bank in its said business, as in said bill alleged, or otherwise, the capital of said bank became or was impaired; and denies that during any of said times bills receivable owned and held by said bank and representing large amounts, or any part of its capital became or were bad debts or were known by the officers or directors of said bank to be bad debts or should by law and usage have been charged off the books of said bank, and denies that any bills receivable of the character and description in said bill alleged which had become bad debts and which should by law and usage have been charged off the books of said bank (if any such there were) continued to be carried on said books as good paper or to represent so much of the capital of said bank, and denies that during any of said times or upon any of the dates or days specified in said bill the board of directors unlawfully or fraudulently or with intent to impair the capital of the bank or to defraud the said bank or its creditors ordered or declared any dividend to be divided amongst or paid to the shareholders of said bank or to this defendant.

3. And further answering, this defendant denies that said bank has paid or delivered to him any dividends or money out of the capital of said bank and not out of net earnings nor clear profits theretofore earned or accumulated, and denies that any of the sums paid by said bank to the defendants as dividends, as set forth
42 in said bill, was or is impressed or charged with a trust in favor of said bank, and denies that any of said sums of money was or still is held by the party receiving the same in trust for the said bank to repay the same for the purpose of restoring any impairment of capital or paying the debts of said bank.

4. And further answering, this defendant denies that at the several times and dates of the order and declaration of dividends by the directors of said bank as in said bill set out and stated, and at all times since the 2d day of January, 1885, inclusive, the said bank has been insolvent, and denies that in pursuance of any intent to impair the capital of the said bank or to defraud said bank and its creditors, the said directors and the officers of said bank or either of them, made any fraudulent representations or false reports to the Comptroller of the Currency of the United States, or concealed at any time the state and condition of the accounts of said bank or its affairs, so that the same were unknown to the Comptroller of the Currency of the United States, the creditors of the said bank, or the general public; and denies that it was ever known to this defendant that there was at any time any impairment of the capital of said bank or that there was at any time any declaration or distribution of large sums of money to and amongst the shareholders of

said bank as dividends when there were no net earnings nor clear profits of the business of said bank on hand to be distributed, and denies that any such facts ever existed, and denies that the same or any other facts or circumstances pointing to or indicating such a state or condition of said bank, or such a course or practice on the part of its officers and directors, were concealed from its depositors or other creditors.

43 5. And this defendant avers that all and every of the said sums of money ordered and declared or paid by the said board of directors or by said bank to this defendant concerning which there is any charge or averment in said bill of complaint, was accepted and received by this defendant in good faith and in the ordinary course of business and without notice, knowledge or suspicion that the same or any of them were not paid out of the net or clear profits of the business of said bank and without impairing the capital thereof and without any notice, knowledge or suspicion that any of the bills receivable, owned or held by said bank, had become or were bad debts or should by law and the customs, rules and usages of banks and bankers — been charged off the books of said bank and yet continued to be carried on in the books of said bank as good paper and without any notice, knowledge or suspicion that any of the bills receivable appearing upon the books of said bank and belonging to the capital thereof as being entitled to be counted as a part of the capital, do not properly so appear upon the said books and without any notice, knowledge or suspicion of any of the misdoings, if any there were, which this defendant does not admit but expressly denies which said bill avers to have been committed by said bank, its officers or directors.

6. And this defendant, further answering, says that all sums of money received by him or the defendant John B. Dodd from said bank, as dividends, were paid to them as the holders of certain shares of the stock of said bank, upon which the original subscription was paid in full, and for which this defendant paid more than the face value thereof, and since acquiring the same, this defendant has been and still is the equitable owner of said stock and entitled to all dividends paid thereon; that in the month of June, 1893, said complainant requested the defendant John B. Dodd to pay to him, said complainant, the sum of five thousand dollars, representing that upon an accounting by said complainant as receiver, an assessment on the stock of said bank of one hundred per centum had been levied by the Comptroller of the Currency under sections 5151 and 5234 of the Revised Statutes of the United States; that prior to or at the time when such request was made, no demand for an accounting for or repayment of any sum or sums of money paid out by said bank, as dividends, had been made upon this defendant, or the defendant John B. Dodd, nor had either of the defendants herein any knowledge, notice or information whatsoever, that any such claim as the complainant has set forth in his bill would be made against them or either of them; and this defendant, acting in good faith and believing that he was entitled to retain all sums of money paid as dividends on said stock, and that the capital stock of said bank

had been fully paid in, and that none thereof had been repaid as dividends or otherwise, to any of the shareholders (all of which this defendant was induced to believe and rely upon by the acts of the complainant and of the said bank and its creditors, and by the omission of the complainant to make known to this defendant his purpose to assert the claim set forth in said bill), complied with the aforesaid request of the complainant, and as the equitable owner of said stock, paid to him for the use and benefit of said bank, the sum of five thousand dollars, the amount of said assessment; and this defendant avers that in estimating the amount of the assets of said bank, for the purpose of determining the deficiency for which the said assessment was levied, the claim for the sum of \$253,000, stated in said bill to have been wrongfully paid to and received by the shareholders of said bank as dividends, was not nor was any part thereof reckoned as assets of said bank; and that if said claim, or so much thereof as was then collectible, had been so reckoned, such an assessment would not have been made, and that the levying and collection of said assessment, in the manner aforesaid, was and is an admission that no claim then existed against either of the defendants such as the complainant sets forth in said bill, and the complainant is estopped thereby.

7. And this defendant, further answering, says that if the complainant, the said banking association, or its creditors, had any right, claim, or cause of action against this defendant of the kind or nature or description set forth in complainant's bill (which this defendant does not admit, but expressly denies), the same was fully satisfied and discharged by the aforesaid payment of five thousand dollars by this defendant to said complainant.

8. And this defendant, further answering said bill of complaint as to so much of said bill as seeks an account and discovery, or that seeks the recovery and repayment of the several sums of money averred and stated in the said bill to have been paid to and received and accepted by this defendant at sundry times mentioned in said bill, and prior to the 1st day of July, 1890, and described in the said bill of complaint as the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleventh dividends, or as the sums of money so paid and received soon or next after the declaration of such dividends as set forth in said bill, this defendant says, that none of said sums of money were paid to or received by him within four years before this action was brought, or within four years before the said bill of complaint was filed, or before this defendant was served with any process of this honorable court to answer said bill, or before any process whatsoever was sued out against this defendant to account for or repay said sums of money, or any of them; and that if the said plaintiff, or the said bank, or the creditors thereof, had any cause of action or suit against this defendant for or concerning any of the said matters, which this defendant does not admit but expressly denies, such cause of action or suit did not accrue or arise within four years before the said bill was filed or process issued or served on this defendant requiring him to answer the same, nor did this defendant at any time within

four years before said bill was exhibited or process sued out against him, promise or agree to come to any account or to make any satisfaction, or to pay any sum or sums of money for or by reason of any of said matters. That by far the greater part of the shareholders of the stock of said The Capital National Bank of Lincoln, Nebraska, and of the depositors thereof, reside in the said State of Nebraska, and the said complainant has filed a bill of complaint in the circuit court of the United States for the district of Nebraska against the said shareholders in that jurisdiction, stating in substance the same matters that are set forth in said bill exhibited against this defendant and setting forth and claiming that large sum of money have been fraudulently paid by said bank to said Nebraska shareholders as dividends, but out of the capital of said bank, in the same manner and form as the similar averments in the said bill against this defendant and praying for the same equitable relief against said Nebraska shareholders as prayed for

47 in said bill against this defendant; that the statute laws of the said State of Nebraska contain a statute of limitations which bars all suits or actions of this nature unless brought within four years after the cause of action shall have accrued; that the said Nebraska shareholders have respectively received their ratable shares of all sums of money by the board of directors of said Capital National Bank of Lincoln ordered and declared and directed to be paid as dividends at or soon after the respective times when the said sums were so ordered and directed to be paid, yet the complainant and the said banking association and its creditors have through neglect and laches failed and omitted to bring any action against said Nebraska shareholders or any of them to recover or compel an accounting for any of said sums of money received by them as aforesaid until the 3d day of July, 1894, and until all claim and cause of action therefor against said Nebraska shareholders accruing prior to July 1st, 1890, became barred by the statute of limitations of said State of Nebraska, and the defendants in said Nebraska suit, or some of them, or such of them as have answered; have duly appeared by their solicitors and filed answers to the said bill against them, whereby they plead the said statute of limitations of the State of Nebraska in bar of so much of the cause of action claimed and alleged in the said bill of complaint against them as they claim did not accrue within four years before the time when said action was brought.

And this defendant pleads the several matters aforesaid in bar to so much of complainant's said demand as aforesaid as is alleged to have accrued prior to the first day of July, 1890, and prays the judgment of this honorable court thereon.

9. And this defendant, further answering said bill of complaint as to so much of said bill as seeks an account and discovery or seeks the recovery and repayment of the said several sums of money averred and stated in the said bill to have been paid to and received and accepted by this defendant at sundry times mentioned in said bill and prior to the first day of July, 1888, and described in said bill of complaint as the first, second, third, fourth,

fifth, sixth and seventh dividends or as the sums of money so paid and received soon or next after the declaration of such dividends, as set forth in said bill, this defendant says that none of said sums of money were paid to or received by him within six years before this action was brought or within six years before the said bill of complaint was filed or before this defendant was served with any process of this honorable court to answer said bill, or before any process whatsoever was sued out against this defendant to account for or repay said sums of money or any of them, and that if the said plaintiff and the said bank or the creditors thereof have any cause of action or suit against this defendant for or concerning any of the said matters so occurring or accruing prior to July 12th, 1888, which this defendant does not admit but expressly denies, such cause of action or suit did not accrue or arise within six years before the said bill was filed or process issued or served on this defendant requiring him to answer the same; nor did this defendant at any time within six years before said bill was exhibited or process sued out against him, promise or agree in writing or otherwise to come to any account or to make any satisfaction or to pay any sum or sums of money for or by reason of any of said matters, and that if the plaintiff's alleged cause of action or any part thereof is not barred by the statute of limitations of the State of Nebraska and the laches of the complainant and of said banking association and its creditors and

49 their failure to bring suit against said Nebraska shareholders until July 3d, 1894, as above alleged, then so much of the complainant's alleged cause of action or claim as accrued prior to the first day of July, 1888, is barred by the statute of limitations of the State of New York.

And this defendant pleads the several matters aforesaid in bar to so much of complainant's said demands as aforesaid as is alleged to have accrued prior to the first day of July, 1888, and prays the judgment of this honorable court thereon.

10. And this defendant submits to this honorable court that all and every of the matters in said plaintiff's bill of complaint mentioned or complained of are matters which may be tried and determined by law, and with respect to which the said plaintiff is not entitled to any relief from a court of equity, and this defendant hopes that he will have the same benefit of this defense as if he had demurred to the said plaintiff's bill.

Wherefore the defendant prays that the said bill of complaint be dismissed, with costs.

JOHN T. LOCKMAN,

Solicitor for Defendant George G. Williams.

50 In the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln, against GEORGE G. WILLIAMS and JOHN B. DODD.	}	In Equity.
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The Answer of John B. Dodd, One of the Defendants, to the Bill of Complaint of the Above-named Complainant.

This defendant now and at all times hereafter, saving and reserving to himself all and all manner of benefit or advantage of exception or otherwise, that can or may be had to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for him to make answer to, answering, says:

1. That he admits that said Capital national bank mentioned in said bill of complaint was organized as a national banking association under the laws of the United States in the manner and form and at the time in said bill set forth and averred, and that said bank from the date of said organization and until on or about the 23d day of

January, 1893, was engaged in and carried on the business of
51 banking at Lincoln, Nebraska, under the laws of the United States, and that on or about said last-mentioned day said Capital National Bank of Lincoln failed, became and was insolvent, and that thereupon John D. Macfarland was appointed receiver of said bank, and thereafter resigned his said office, and that the complainant was duly appointed receiver of said bank to succeed said Macfarland, and that said complainant is now the duly appointed and qualified receiver of said bank in manner of form as in said bill set forth.

2. And further answering, this defendant denies that at different times and dates between the time and date of the organization of the said bank and the time and date of its failure as in said bill stated, the said bank met with and sustained great and heavy losses in its business, and denies that by reason of such losses, or by reason of any other cause, within less than six months after its organization and commencement of business the capital of said bank became and was greatly impaired; and denies that on or prior to the 31st day of December, 1884, or between said last-named date and the 30th day of June, 1885; or between June 30th, 1885, and December 31st, 1885; or between December 31st, 1885, and June 30th, 1886; or between June 30th, 1886, and December 31st, 1886; or between December 31st, 1886, and June 30th, 1887; or between June 30th, 1887, and December 31st, 1887; or between December 31st, 1887, and June 30th, 1888; or between June 30th, 1888, and December 31st, 1888; or between December 31st, 1888, and June 30th, 1889; or between June 30th, 1889, and December 31st, 1889; or between December 31st, 1889, and June 30th, 1890; or between June 30th, 1890, and December 31st, 1890; or between December 31st, 1890, and

52 June 30th, 1891; or between June 30th, 1891, and December 31st, 1891; or between December 31st, 1891, and June 30th, 1892, said bank met with and sustained great and heavy losses, or any losses in its business, and denies that during any of said times the said bank had no net earnings nor clear profits of the business of said bank theretofore done and transacted, and denies that during any of said times by means of losses met and sustained by the said bank in its said business, as in said bill alleged, or otherwise, the capital of said bank became or was impaired; and denies that during any of said times bills receivable owned and held by said bank and representing large amounts, or any part of its capital became or were bad debts or should by law or usage have been charged off the books of said bank, and denies that any bills receivable of the character and description in said bill alleged which had become bad debts and which should by law and usage have been charged off the books of said bank (if any such there were) continued to be carried on said books as good paper or to represent so much of the capital of said bank, and denies that during any of said times or upon any of the dates or days specified in said bill the board of directors unlawfully or fraudulently or with intent to impair the capital of the bank or to defraud the said bank or its creditors ordered or declared any dividend to be divided amongst or paid to the shareholders of said bank or to this defendant.

3. And further answering, this defendant denies that said bank has paid or delivered to him any dividends or money out of the capital of said bank and not out of net earnings nor clear profits theretofore earned or accumulated, and denies that any of the sums paid by said bank to the defendants as dividends, as set forth in said bill, was or is impressed or charged with a trust in favor
53 of said bank, and denies that any of said sums of money was or still is held by the party receiving the same in trust for the said bank to repay the same for the purpose of restoring any impairment of capital or paying the debts of said bank.

4. And further answering, this defendant denies that at the several times and dates of the order and declaration of dividends by the directors of said bank as in said bill set out and stated, and at all times since the 2d day of January, 1885, inclusive, the said bank has been insolvent, and denies that in pursuance of any intent to impair the capital of the said bank or to defraud said bank and its creditors, the said directors and the officers of said bank or either of them, made any fraudulent representations or false reports to the Comptroller of the Currency of the United States, or concealed at any time the state and condition of the accounts of said bank or its affairs, so that the same were unknown to the Comptroller of the Currency of the United States, the creditors of the said bank or the general public; and denies that it was ever known to this defendant that there was at any time any impairment of the capital of said bank or that there was at any time any declaration or distribution of large sums of money to and amongst the shareholders of said bank as dividends when there were no net earnings nor clear profits of the business of said bank on hand to be distributed, and

denies that any such facts ever existed, and denies that the same or any other facts or circumstances pointing to or indicating such a state or condition of said bank, or such a course or practice on the part of its officers and directors, were concealed from its depositors or other creditors.

5. And this defendant avers that all and every of the said sums of money ordered and declared or paid by the said board
54 of directors or by said bank to this defendant concerning which there is any charge or averment in said bill of complaint was accepted and received by this defendant in good faith and in the ordinary course of business and without notice, knowledge or suspicion that the same or any of them were not paid out of the net or clear profits of the business of said bank and without impairing the capital thereof and without any notice, knowledge or suspicion that any of the bills receivable, owned or held by said bank, had become or were bad debts or should by law and the customs, rules and usages of banks and bankers — been charged off the books of said bank and yet continued to be carried on in the books of said bank as good paper and without any notice, knowledge or suspicion that any of the bills receivable appearing upon the books of said bank and belonging to the capital thereof as being entitled to be counted as a part of the capital, do not properly so appear upon the said books and without any notice, knowledge or suspicion of any of the misdoings, if any there were, which this defendant does not admit but expressly denies, which said bill avers to have been committed by said bank, its officers or directors.

6. And this defendant, further answering, says, that all sums of money received by him or the defendant George G. Williams from said bank, as dividends, were paid to them as the holders of certain shares of the stock of said bank, upon which the original subscription was paid in full, and for which said defendant, George G. Williams, paid more than the face value thereof, and that said defendant, George G. Williams, since acquiring the same has been and still is the equitable owner of said stock and entitled to all dividends paid
55 thereon; that in the month of June, 1893, said complainant requested this defendant to pay to him, said complainant, the sum of five thousand dollars, representing that upon an accounting by said complainant, as receiver, an assessment on the stock of said bank of one hundred per centum had been levied by the Comptroller of the Currency under sections 5151 and 5234 of the Revised Statutes of the United States; that prior to or at the time when such request was made, no demand for an accounting for or repayment of any sum or sums of money paid out by said bank as dividends had been made upon this defendant, or the defendant George G. Williams, nor had either of the defendants herein any knowledge, notice or information whatsoever that any such claim as the complainant has set forth in his bill would be made against them or either of them; said defendant Williams, acting in good faith and believing that he was entitled to retain all sums of money paid as dividends on said stock, and that the capital stock

of said bank had been fully paid in and that none thereof had been repaid, as dividends or otherwise, to any of the shareholders (all of which defendant was induced to believe and rely upon by the acts of the complainant and of the said bank and its creditors, and by the omission of the complainant to make known to the defendants his purpose to assert the claim set forth in said bill), complied with the aforesaid request of the complainant, and as the equitable owner of said stock, paid to him for the use and benefit of said bank, the sum of five thousand dollars, the amount of said assessment; and this defendant avers that in estimating the amount of the assets of said bank, for the purpose of determining the deficiency for which the said assessment was levied, the claim for the sum of \$253,000,

56 stated in said bill to have been wrongfully paid to and received by the shareholders of said bank as dividends, was not nor was any part thereof reckoned as assets of said bank; and that if said claim, or so much thereof as was then collectible, had been so reckoned, such an assessment would not have been made, and that the levying and collection of said assessment, in the manner aforesaid, was and is an admission that no claim then existed against the defendants such as the complainant sets forth in said bill, and the complainant is estopped thereby.

7. And this defendant, further answering, says that if the complainant, the said banking association, or its creditors, had any right, claim or cause of action against this defendant of the kind or nature or description set forth in complainant's bill (which this defendant does not admit, but expressly denies), the same was fully satisfied and discharged by the aforesaid payment of five thousand dollars by the defendant George G. Williams to the complainant.

8. And this defendant submits to this honorable court that all and every of the matters in said plaintiff's bill of complaint mentioned or complained of are matters which may be tried and determined by law, and with respect to which the said plaintiff is not entitled to any relief from a court of equity, and this defendant hopes that he will have the same benefit of this defense as if he had demurred to the said plaintiff's bill.

Wherefore the defendant prays that the said bill of complaint be dismissed with costs.

JOHN T. LOCKMAN,
Solicitor for Defendant George G. Williams.

57 Circuit Court of the United States, Southern District of New York.

KENT K. HAYDEN, Receiver of the Capital National Bank of }
 Lincoln, Nebraska, }
against
 GEORGE G. WILLIAMS and JOHN B. DODD. }

The Replication of the Above-named Complainant to the Separate Answer of Defendant George G. Williams.

This repliant, saving and reserving to himself, now and at — times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto says that he will aver, maintain and prove this bill of complaint to be true, certain and sufficient in law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

Dated November 19th, 1894.

EDWARD WINSLOW PAIGE,
Solicitor for Complainant.

58 Circuit Court of the United States, Southern District of New York.

KENT K. HAYDEN, Receiver of the Capital National Bank of }
 Lincoln, Nebraska, }
against
 GEORGE G. WILLIAMS and JOHN B. DODD. }

The Replication of the Above-named Complainant to the Separate Answer of Defendant John B. Dodd.

This repliant, saving and reserving to himself, now and at — times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto says that he will ever, maintain and prove his bill of complaint to be true, certain and sufficient in law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all

which matters and things this repliant is and will be ready to aver and maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

Dated November 19th, 1894.

EDWARD WINSLOW PAIGE,
Solicitor for Complainant.

59 [Endorsed:] United States circuit court of appeals, second circuit. Kent K. Hayden, as rec'r, *vs.* George G. Williams *et al.* Certification of questions to Supreme Court. United States circuit court of appeals, second circuit. Filed Mar. 10, 1898, William Parkin, clerk.

Endorsed on cover: (Certificate.) Case No. 16,819. U. S. C. C. of appeals, 2nd circuit. Term No., 257. Kent K. Hayden, as receiver, appellant, *vs.* George G. Williams and John B. Dodd. Filed March 12th, 1898.